

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

DARWIN LEWIS,

Petitioner,

v.

WARDEN,

Respondent.

CAUSE NO.: 3:24-CV-179-TLS-JEM

ORDER

Darwin Lewis, a prisoner without a lawyer, initiated this case by filing a habeas corpus petition challenging the disciplinary decision (ISP-23-9-2929) at the Indiana State Prison in which a disciplinary hearing officer (DHO) found him guilty of possessing an electronic device in violation of Indiana Department of Correction Offense 207. According to the initial petition, he was sanctioned with a loss of ninety days earned credit time, but the sanctions were suspended.

Pursuant to Section 2254 Habeas Corpus Rule 4, the Court reviewed the initial petition. ECF No. 4. The Court observed that Lewis did not answer the question on the form petition as to whether the suspended sanction had been imposed. The Court further observed that other portions of the petition suggested that the sanction had not been imposed and that the habeas case should be dismissed because it did not relate to the fact or duration of Lewis' sentence. However, in an abundance of caution, the Court allowed Lewis an opportunity to clarify whether the loss of earned credit time that had been suspended had also been imposed.

Lewis has now responded by filing an amended petition in which he represents that the suspended sanction has not been imposed. ECF No. 5. "[A] habeas corpus petition must attack

the fact or duration of one's sentence; if it does not, it does not state a proper basis for relief under § 2254." *Washington v. Smith*, 564 F.3d 1350, 1351 (7th Cir. 2009). Lewis' sanctions include only a loss of earned credit time, which has been suspended and has not been imposed, so the disciplinary proceedings have not increased the duration of his sentence. Because Lewis' claims do not relate to the fact or duration of his sentence, the Court cannot grant him habeas relief.

If Lewis wants to appeal this decision, he does not need a certificate of appealability because he is challenging a prison disciplinary proceeding. *See Evans v. Circuit Court*, 569 F.3d 665, 666 (7th Cir. 2009). However, he may not proceed in forma pauperis on appeal because the Court finds pursuant to 28 U.S.C. § 1915(a)(3) that an appeal in this case could not be taken in good faith.

For these reasons, the Court:

- (1) DENIES the amended habeas corpus petition [ECF No. 5];
- (2) DIRECTS the Clerk of Court to enter judgment and close this case; and
- (3) DENIES Darwin Lewis leave to proceed in forma pauperis on appeal.

SO ORDERED on April 2, 2024.

s/ Theresa L. Springmann
JUDGE THERESA L. SPRINGMANN
UNITED STATES DISTRICT COURT